IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION APPLICATION NO.223 OF 2005

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Aminuddin Amiruddin Sheikh ...Applicant

v/s.

ITC Limited ...Respondent

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Mr.H.S.S.Murthy for the Applicant.

Ms.Gitanjali Prabhu with Ms.Najma Shaikh i/b Vigil Juris for the Respondent.

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**CORAM: D.K.DESHMUKH, J.**

**DATED:** 25TH AUGUST,2006

**P.C.:**

1. Heard learned Counsel for both sides. The Respondent raised objection to the maintainability of

this Application in this court on the ground that in the Article of Association it is stated that the dispute between the parties shall be filed before the court in Delhi. Admittedly, no part of cause of action has arisen in Delhi. But according to the Respondent as its corporate office is in Delhi, under Section 20 of the Civil Procedure Code suit could have been filed in Delhi.

2. Argument has no substance because no cause of action has arisen in Delhi and the Respondent carries on business in Mumbai. Section 20 of CPC will not apply to the original jurisdiction of the Delhi High Court. The parties have agreed to appoint Mr.Justice S.M.Jhunjhunuwala (Retd.) as the third arbitrator. The Applicant has also stated that the expenditure necessary for the travel of Justice Mr.S.M. Jhunjhunuwala (Retd.) for arbitration from Mumbai to Delhi and the expenditure incurred by him for his stay at Delhi will be incurred by the Applicant.

3. Considering the facts and circumstances of the case, as the Applicant has agreed to bear the expenditure necessary for the travel of Justice Mr.Jhunjhunuwala (Retd.) from Mumbai to Delhi for the

purpose of arbitration and also to bear the expenditure of Mr.Justice Jhunjhunuwala (Retd.) for stay at Delhi for the same purpose, in my opinion, it will be appropriate to appoint Mr.Justice Jhunjhunuwala (Retd.) as third arbitrator. It is accordingly so ordered.

4. Though the name of Mr.Justice Jhunjhunuwala was suggested by the Applicant and though the objection to the name of Mr.Justice Jhunjhunuwala as third arbitrator as such was not raised, unnecessarily objection was raised that the Applicant should be forced to suggest the name of the arbitrator who is residing in Delhi though the Applicant is not seeking change of place of arbitration and also is willing to pay necessary expenditure for travel and stay of the arbitrator from Mumbai being appointed.

. The advocate for the Respondent went on claiming that an arbitrator from Delhi should be named, though she could not give any reason why a person from Mumbai cannot be appointed. Initially the Respondent claimed that an arbitrator from Mumbai should not be appointed as the arbitration proceedings were to be held in Delhi it would add to the costs. On that the

Applicant stated that the Applicant is willing to bear the expenditures as stated above. Even then the advocate for the Respondent kept on insisting that the arbitrator from Delhi should be named and took considerable time of the court unnecessarily.

5. In this view of the matter, therefore, in my opinion, considering the conduct of the Respondent of raising unnecessary objection, exemplary costs are required to be imposed on the Respondent. Application is, therefore, disposed of. Respondent is directed to pay to the applicant as an by way of costs of this application Rs.10,000/-.

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